

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4097-10
Bill No.: Perfected SS#2 for SCS for SB 1152
Subject: Courts; Civil Procedure; Criminal Procedure; Juvenile Courts
Type: Original
Date: April 30, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(Unknown) to \$1,890,427	(Unknown) to \$1,906,710	(Unknown) to \$1,906,911
Crime Victims' Compensation	\$1,916,666	\$2,300,000	\$2,300,000
Legal Expense*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Criminal Records System	(\$54,885)	(\$63,420)	(\$65,007)
Highway	(Unknown)	(Unknown)	(Unknown)
Road	(\$18,950,000)	(\$46,840,000)	(\$48,250,000)
State School Money	\$0	\$0	\$0
Total Estimated Net Effect on <u>All State Funds</u>	(\$17,073,219 to Unknown)	(\$43,603,420 to Unknown)	(\$46,015,007 to Unknown)

*Could exceed (\$100,000) in any given fiscal year.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Federal Funds	\$10,534	\$13,026	\$13,416
Total Estimated Net Effect on <u>All Federal Funds</u>	\$10,534	\$13,026	\$13,416

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 22 pages.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	Unknown to \$1,900,000	Unknown to \$1,900,000	Unknown to \$1,900,000

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Insurance, Office of Administration – Division of Personnel, – Administrative Hearing Commission, – Commissioner’s Office, Missouri House of Representatives, Department of Health and Senior Services, Department of Mental Health, Missouri Senate, State Auditor’s Office, State Treasurer’s Office, Department of Economic Development, Lieutenant Governor’s Office, and the Governor’s Office** assume the proposed legislation would have no fiscal impact on their agencies.

In response to a previous version of this proposal (SB 1152), officials from the **St. Louis County Sheriff’s Office** assumed the proposed legislation would have no fiscal impact on their agency.

In response to a previous version of this proposal (SB 1152), officials from the **Callaway County Circuit Clerk’s Office** assumed the elimination of advance filing fees or court cost assessments (\$455.027) would increase the financial burden to the county. Also, the number of filing fees would increase, so the county would be liable for a greater number of fees.

In response to a previous version of this proposal (SB 1152), officials from the **Cole County Recorder of Deeds’ Office** assumed costs would increase approximately \$25,000 per year due to the need for extra manpower to record, release, etc. liens.

Officials from the **Office of Secretary of State (SOS)** assume this bill establishes the State Court Judicial Administrative Revolving Fund and modifies various aspects of court administration. The State Court Administrator may promulgate rules to implement this bill. Based on experience with other divisions, the rules, regulations and forms issued by the State Court Administrator could require as many as 12 pages in the *Code of State Regulations*. For any given rule, roughly half again as many pages are published in the *Missouri Register* as in the code because cost statements, fiscal notes and the like are not repeated in Code. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn. Based on these costs, the SOS estimates the cost of the proposal to be \$738 in FY 03 and unknown in subsequent years.

ASSUMPTION (continued)

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which would require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Attorney General to Defend Constitutionality of Legislative Enactment (§§27.060 & 507.240)

Officials from the **Office of Attorney General (AGO)** assume the legislation will result in additional costs because the bill allows any member of the General Assembly to intervene in any proceeding involving the constitutionality or operation of any legislative enactment. Because a wide variety of cases might be impacted, the AGO assumes such costs could be significant if a number of legislators choose to intervene in one or more proceedings. Costs are unknown.

Oversight assumes the AGO could experience an increase in costs due to the proposed legislation. Oversight assumes the AGO could absorb the cost within existing resources. Should the AGO experience an increase that would justify additional funding, the AGO could request the funding through the appropriation process.

Background Checks on Sex Offenders (§§43.540 and 589.410)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume the proposal allows the patrol to provide information on persons registered as sex offenders when a background check request is made pursuant to Section 43.540, RSMo.

The MHP's Criminal Records and Identification Division (CRID) provided approximately 1.2 million background checks in 2001. If half of the checks were for the purposes in Section 43.540, then 600,000 searches would be required to be put into the sex offender registry. The technology is not currently available to conduct a synchronized search of the two databases (criminal history record and Megan's Law offenders), but will be available in the near future.

The MHP's CRID would require a full-time Computer Information Tech Specialist I position (at \$41,556 per year) to design, develop, acquire training, maintain the application and hardware, ensure security, and monitor the network infrastructure. The MHP estimates the annual cost to the Criminal Records System Fund for the requested FTE, including fringe benefits, equipment and expense, to be \$54,885 in FY 03; \$63,420 in FY 04; and \$65,007 in FY 05.

ASSUMPTION (continued)

Marion County Circuit Clerk (§59.041) (SA5)

Officials from the **Office of State Courts Administrator (CTS)** assume the proposal would remove the provision included in SB 288 last session that gave the Marion County Circuit Court the right to appoint the Division 1 circuit clerk if the office is separated from the Recorder of Deeds. CTS would not assume any fiscal impact from this provision.

Oversight assumes no state fiscal impact. Oversight assumes that by removing language that would make the office of Circuit Clerk of Division I appointive rather than elective, would make the office elected once again. Oversight assumes that there could be some election printing, and advertising costs. Oversight assumes these costs would be minimal. Oversight will show fiscal impact to local government as \$0.

In Second Injury Claims Administrative Law Judge Could Appoint an Impartial Physician to Examine Issues (§287.210)

Officials from the **Attorney General's Office (AGO)** estimate their agency would request additional staff (5 assistant attorneys general, 1 paralegal and 2 secretaries). AGO assumes the proposal would mainly affect partial disability claims filed against the Second Injury Fund (SIF). If SIF cases were allowed to be submitted on medical reports, cases previously settled or dismissed would be taken to hearing resulting in an additional 800 to 1,200 cases. Along with this increase, appeals would increase. In order to adequately defend these cases, SIF attorneys would have to cross-examine the claimant's doctor. AGO estimates annual costs of \$380,000 to \$400,000. AGO also estimates a loss to the Second Injury Fund of \$5.0 million annually, due to an increase in claims.

Based on an Oversight Subcommittee decision on March 30, 1998, the fiscal impact of this proposal is assumed to be zero.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposal allows an administrative law judge to appoint an impartial physician in claims against the Second Injury Fund. There are no long-range implications to the DOLIR for this portion of the proposal.

Creditor Liens Filed (§429.470)

Officials from the **Department of Revenue (DOR)** assume if Missouri acts as a creditor in this situation, and the Debtor files bankruptcy, the State (DOR) will have to monitor and collect on this judgment lien in Federal Court.

ASSUMPTION (continued)

Removes Requirement to File All Income Withholding Orders with the Circuit Clerk in Child Support Cases (§454.505)

Officials from the **Department of Social Services – Division of Child Support Enforcement (DCSE)** assume the proposal eliminates the requirement that DCSE send a copy of the administrative wage withholding on a non-custodial parent to the circuit clerk of the appropriate court, resulting in reduced office supply costs.

In order to estimate the fiscal impact of the proposal, DCSE calculated the number of case actions that would be affected by this legislation, considered the effect upon paper, copier/printer, and postage costs. The DCSE estimates the total savings to be \$2,361 for paper and \$16,800 for postage, for a total savings of \$19,161. The DCSE estimates the savings to the General Revenue Fund to be \$5,427 in FY 03; \$6,710 in FY 04; and \$6,911 in FY 05. The DCSE estimates the savings to Federal Funds to be \$10,534 in FY 03; \$13,026 in FY 04; and \$13,416 in FY 05.

County Commissions Pay Salaries of Deputy Circuit Clerks and Division Clerks (§§476.270 and 483.245)

Officials of the **Office of State Courts Administrator** stated that this proposal would authorize County Commissions to pay the salaries of Deputy Circuit Clerks and Division Clerks. Officials stated since the only result of this proposal would be to codify current practice, there would be no cost or savings to the Judiciary.

Court Ordered Fee (§488.5021)

Officials from the **Department of Revenue (DOR)** assume if the person who pays the penalty fee files bankruptcy, there are possible consequences if they include a criminal fee in their bankruptcy proceeding. This may not affect the DOR unless the fee is a Motor Vehicle Administrative fee like the one for DWI, etc.

Officials from the **Office of State Courts Administrator (CTS)** assume this section would allow a court to assess an additional \$20 fee for penalties, fines, and sanctions not paid in full within 30 days of imposition.

Depending on the rate of assessment and collection, CTS estimates the range of possible collections is from \$1 million to \$1.9 million. The first figure, \$1 million, is based upon a 20% to 25% collection on misdemeanor and felony cases, and 10% on traffic. The second figure, \$1.9 million, is based on a collection rate of 50% of felonies and 75% of misdemeanors, and is the less likely amount of the two estimates.

ASSUMPTION (continued)

Oversight assumes a \$20 fee for penalties, fines, and sanctions not paid within 30 days of imposition would result in an increase in fine revenue to the municipalities, counties, and local school districts. Oversight assumes the increase in fine revenue resulting from this proposal to the local school districts will decrease the contribution by the state to the State School Money Fund (through the General Revenue Fund).

Setoff of Income Tax Refund for Failure to Pay Court Costs (\$488.020)

Officials from the **Department of Elementary and Secondary Education (DESE)** assume there is no state cost to the foundation formula associated with this bill. DESE does not know how much additional money might be collected by the DOR to distribute to schools. Any increase in this money distributed to schools becomes a deduction in the foundation formula the following year. Therefore, the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula with a proration factor of 1.00.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume Office of State Courts Administrator may seek a setoff of an individual's state income tax refund by the Department of Revenue if their crime victims' penalties equal \$25 or more and may eliminate the authority of the DOLIR to review criminal case files in situations where the judicial proceedings were sealed by a judge. DOLIR cannot determine the net fiscal gain to the crime victims' compensation fund from these proposed changes because the DOLIR has no means to determine the number of offenders who receive Missouri income tax refunds. Therefore, the actual net gain to the fund can be expected to be substantially less than the figure used in this fiscal note.

State Subject to Lawsuits in State Courts for Violations of Americans with Disabilities Act (537.610) (SA7)

Officials from the **Office of Attorney General** assume the costs related to this proposal could be absorbed with existing resources.

Officials from the **Department of Transportation (MoDOT)** assume Senate Amendment 7 provides that state of Missouri consents to suit under the Americans with Disability Act in state, but not federal, court, with maximum monetary judgments no greater than sovereign immunity limits in section 537.600. Currently, MHTC cannot be sued under the Americans with Disability Act, therefore this would provide a new cause of action against MHTC. MoDOT complies with the Americans with Disability Act, therefore there will be no fiscal impact.

ASSUMPTION (continued)

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would waive the state's sovereign immunity and permit suits against the state under the federal Americans with Disabilities Act. CTS assumes that suits would be filed in state court and there may be some increase in the number of cases filed. However, CTS has no way of estimating that increase at this time and does not anticipate that it would be substantial enough to require a budget increase in the courts.

Officials from the **Office of Administration – Division of Risk Management/General Services (OA)** assume the bill makes various changes to court administration. Senate Amendment 7 subjects the State of Missouri, through the waivers of sovereign immunity to liability claims for violation of the Americans with Disabilities Act. This proposal appears to be in response to a recent US Supreme Court ruling. OA has no history of such claims prior to the ruling and, therefore, cannot quantify a cost impact. OA assumes the proposal does have the potential for cost to the state.

Oversight assumes that prior to the recent U.S. Supreme Court decision, cases could be filed in state court. Oversight assumes that this proposal allows such cases to be filed in state court. Based on these assumptions and the assumptions provided by the CTS, Oversight assumes the administrative impact of this portion of the proposal is \$0. Oversight assumes the impact of this proposal as it relates to the state would be \$0 to (Unknown), depending on the success of the lawsuits. Oversight assumes that any one judgment against the state could exceed \$100,000.

Crime Victim Compensation Judgment (§595.045)

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposed changes authorize the payment of attorney fees from the Tort Victims' Compensation Fund. The proposal impacts the Division's Crime Victims' Compensation Program by adding individuals pleading guilty to certain crimes to those already required to pay penalties into the Crime Victims' Compensation Fund, changing the statutory language exempting certain crimes from this penalty, eliminating the requirement that circuit court clerks maintain records pursuant to Chapter 595. Based on Office of State Courts Administrator (CTS) data for FY 2001, the DOLIR believes that requiring individuals who plead guilty to pay crime victims' compensation penalties would add an additional \$2.3 million in annual revenue to the Crime Victims' Compensation Fund. The DOLIR believes the provision that eliminates the requirement that circuit clerks maintain records of criminal convictions and judgments will have a detrimental impact to the fund. The DOLIR uses this data to ensure that circuit clerks are transferring revenue mandated by statute to the Crime Victims' Compensation Fund.

ASSUMPTION (continued)

In FY 2001, Missouri Circuit, associate circuit, and appellate courts accepted 121,387 pleas of guilty in cases where the defendant would be required to pay a penalty into the Crime Victims' Compensation Fund. To determine the fiscal impact, the DOLIR's Division of Workers' Compensation used Office of State Courts Administrator estimates that the anticipated collection rate of these penalties would be 80% in all cases except those involving juveniles, where the collection rate would be 50%.

The DOLIR then applied the appropriate penalty to determine the net gain to the fund for felony or misdemeanor offenses. For purposes of this fiscal note, the DOLIR assumed that in felony cases all pleas of guilty would result in a reduction of the original criminal charge and, therefore, assumed either a class C or D felony carrying with it a penalty of \$48 per conviction. Finally, the DOLIR has no method to determine the statutory noncompliance rate if circuits were not required to maintain conviction and case judgment data.

In summary, the DOLIR estimates the fiscal impact to be an increase to the Crime Victims' Compensation Fund in the amount of \$1,916,666 in FY 03; \$2,300,000 in FY 04; and \$2,300,000 in FY 05.

Sealing of Court Records when Suspended Sentence or Probation Completed (§§610.106 & 610.110) (SA1 to SA3)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume state statutes already require a record of a criminal conviction with a suspended imposition of sentence and successful completion of probation to be closed. The MHP assumes that courts would indicate the sealing of the records and the MHP's Information Systems Division (ISD) would not have to do any code changes. Therefore, the MHP assume the proposed legislation would have no fiscal impact on their agency. If the ISD is required to make code changes or become involved in the process of sealing records, there would be fiscal impact and a revised fiscal note would be submitted.

Officials from the **Department of Revenue (DOR)** assume this amendment appears to make an exception to the absolute closure of the record on SIS for guilty pleas on alcohol related cases so the SIS may be used for enhancement of the sanctions in accordance with statute. It would allow their use in the prior or persistent offender determination. The language of this amendment is not completely clear but that is DOR's interpretation.

The amendment is problematic in that it provides for the complete sealing or closing of the records of the case where a person has pled guilty or been found guilty and successfully completed a period of probation. The records are closed for all purposes, notwithstanding any provision of law or court order to the contrary.

ASSUMPTION (continued)

This will include commercial motor vehicle offenses where an SIS or plea of guilty is considered a conviction. Sealing the records would potentially require the removal of the conviction from the driving record which would be masking the information and would violate the Commercial Motor Vehicle Safety Act. It would also affect school bus criminal checks in that these offenses are required to be part of the background check by section 302.272 but this would override and seal the records. It appears to conflict with or override the provisions of section 610.120 which provides for inaccessibility to the general public but availability of sealed or closed records for law enforcement, department of revenue driving record purposes, criminal background checks for in home services providers etc.

The provisions of SA 1 to SA 3 & SA 3 would have compliance implications relating to the Motor Carrier Safety Improvement Act of 1999 (H.R. 3419). Pursuant to this act, all alcohol related traffic offenses committed by someone with a commercial driver license, whether committed in the commercial vehicle or not, have to be permanently retained. The requirements in these amendments to seal these offenses would be a form of masking that is strictly prohibited by the Motor Carrier Safety Improvement Act of 1999. **This amendment would place the State of Missouri in jeopardy of federal funds being withheld due to noncompliance with this act.**

Officials from the **Department of Transportation (MoDOT)** assume Senate Amendment 3 provides for sealing all records of a criminal offense for all purposes and shall only be accessible to the defendant. This amendment violates the federal masking prohibitions in 49 U.S.C.A. Section 31311 (19)(B), which provides that a state “may not allow information regarding such violations (every violation involving a motor vehicle) to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.” Basically, all commercial drivers must have their driving records eligible for access to the government, employers and other individuals pursuant to federal law for any moving violations while the operator was using any motor vehicle. If this legislation is enacted, in the first full fiscal year of violation, USDOT shall withhold 5 percent of a state's apportionments under NHS, STP and IM federal construction funds. If the violation continues, the penalty is increased to 10 percent of these categories of funds for each fiscal year a state is in noncompliance. For FY02, the federal aid (in millions) for the highway programs is as follows: NHS \$135.8; IM \$130.7; STP \$175.1. Assuming a 3 percent growth, the total federal aid for each highway program is as follows: FY03 - NHS \$139.9; IM \$134.6; and STP \$180.3, FY04 - NHS \$144.1; IM \$138.6; and \$185.7 and FY05 - NHS \$148.4; IM \$142.8; and STP \$191.3. Five percent of the total funds for each program in FY 03 will be transferred from the State Road Funds, therefore the fiscal impact for FY03 is as follows: NHS \$7.0; IM \$6.7; STP \$9.0. Ten percent of the total funds for each program in each remaining FY will be transferred from the State Road Funds, therefore the fiscal impact is as follows: FY04 - NHS \$14.4; IM \$13.9; STP \$18.6 and FY05 - NHS \$14.8; IM \$14.3; STP \$19.1.

ASSUMPTION (continued)

Set Aside Criminal Convictions and Expunge Criminal Records (§§610.120, 610.122, 610.132, 610.134, 610.136, 610.138, & 610.140) (SA4)

Officials from the **Office of Attorney General** assume the costs of the proposed legislation could be absorbed within existing resources.

Officials from the **Department of Social Services – Division of Youth Services (DYS)** assume the authorization of the courts to set aside criminal convictions and to expunge criminal records under certain circumstances is not expected to directly impact the DYS. Some applicants for positions with the DYS may have sealed arrest or conviction records due to meeting criteria established within the bill.

In response to an identical proposal in the 2001 session (SB 426), officials from the **Office of Prosecution Services** assumed prosecutors could absorb the costs of the proposed legislation within existing resources.

In response to an identical proposal (SB 1142), officials from the **Office of State Public Defender** assumed existing staff could provide representation for those few cases arising where indigent persons were charged with disclosing sealed records. Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Office of State Courts Administrator (CTS)** assume it is not possible to estimate the fiscal impact of the proposal due to problems interpreting the bill. As written, the bill would be retroactive and a large, unknown number of petitions could be filed, especially in the first few years.

In recent years, there have been between 60,000 and 63,000 convictions or guilty pleas that could fit the definition of the qualifying crimes. CTS does not have age-of-defendant information. Data on the numbers of cases from over ten years ago where the defendant has had no subsequent conviction is not available.

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume, according to the MHP's Criminal Records and Identification Division, there is no accurate way to determine the exact fiscal impact of this legislation. The fiscal impact depends on public reaction to being able to expunge criminal records.

ASSUMPTION (continued)

These calculations are based on the scenario that all eligible individuals petition the court, meet the requirements and the record of the petitioner is sealed. There are approximately 400,000 individuals without an arrest in the past 10 years. Just over 50% of those arrests fall into the category of nonviolent, nonsexual, nondrug and nonweapon offenses. This means that 200,000 people have records eligible for expungement. Since there are 232 working days in a year, and a Criminal History Record Technician can process 12 per day, the Criminal Records and Identification Division would require 75 FTE. The FTE would also require standard office equipment, as well as one full function AFIS work station (\$120,000). 15,000 (200 square foot x 75 FTE) square foot would be necessary to accommodate the additional FTE. The cost of leasing is approximately \$15 per square foot so the cost of the building would be approximately \$225,000 per year.

The MHP's Traffic Division also feels there is no accurate way to determine the exact fiscal impact of this legislation because it is based on public reaction.

Based on the scenario that all eligible individuals petition the court meet the requirements and the record of the petitioner is sealed, the Traffic Division would require 2 FTE. There are an estimated 100,000 records in the Traffic Arrest System and the Alcohol and Drug Offense Records System annually that meet the sealed records criteria. It is assumed that 50,000 (or 50%) of this total would actually be sealed. One FTE can process 10 court orders per hour and with 50,000 orders per year, the division would need 2 FTE, along with standard office equipment.

The Information Systems Division will have to develop automated procedures to address the sealing of records for those individuals who meet the provisions of this proposal. Estimates are calculated based upon the average number of hours required to complete a batch process. Cost figures are calculated based upon utilization of consulting services at the state contract prices.

75 hours (per batch process) x 2 Criminal History Records System procedures = 150 hours.
150 hours x \$100 per hour for consulting services = \$15,000. This cost would be incurred in FY 03.

At the time this fiscal note was being prepared, the Information Systems Division was researching the effects of the proposed legislation on the new rewritten Criminal History, which is currently being tested. If additional research determines that there will be a different fiscal impact, a revised fiscal note will be submitted at that time.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume the penalty provisions in Section 610.138.2 is for a class D felony for defined violations related to sealed records. DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY01 average of \$35.78 per inmate per day, or an annual cost of \$13,060 per inmate) or through supervision provided by the Board of Probation and Parole (FY01 average of \$3.34 per offender per day, or an annual cost of \$1,219 per offender).

The DOC is unable to determine the number of additional inmate beds that may be required as a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Department of Revenue (DOR)** assume this amendment in regard to section 610.134 will allow sealing of the record if the person has pled guilty to or been found guilty of no more than one felony nor more than two misdemeanors as long as the felony is more than ten years old. This will affect the ability to judge eligibility for limited driving privileges unless such convictions may remain on the driving record. Additionally, pursuant to the Commercial Motor Vehicle Safety Act of 1999 it will be a form of masking for commercial motor vehicle drivers. Under the proposed language it does not allow sealing of the record if the conviction is for operation of a commercial motor vehicle. However, under the Act of 1999 all offenses of the commercial driver must be remain on the record, regardless if they were operating a commercial motor vehicle.

ASSUMPTION (continued)

The provisions of SA 4 would have compliance implications relating to the Motor Carrier Safety Improvement Act of 1999 (H.R. 3419). Pursuant to this act, all alcohol related traffic offenses committed by someone with a commercial driver license, whether committed in the commercial vehicle or not, have to be permanently retained. The requirements in these amendments to seal these offenses would be a form of masking that is strictly prohibited by the Motor Carrier Safety Improvement Act of 1999. **This amendment would place the State of Missouri in jeopardy of federal funds being withheld due to noncompliance with this act.**

Officials from the **Department of Transportation (MoDOT)** assume Senate Amendment 4 will have the same fiscal impact as Senate Amendment 3. Please see MoDOT's response in the SA 3 section.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
GENERAL REVENUE FUND			
<u>Savings</u> – Department of Social Services (\$454.505)			
Reduced copy/postage expense	\$5,427	\$6,710	\$6,911
<u>Savings</u> – Decreased Transfers to State School Money Fund (\$488.5021)			
	Unknown to \$1,900,000	Unknown to \$1,900,000	Unknown to \$1,900,000
<u>Costs</u> – Office of State Courts Administrator (\$610)			
Sealing records	(Unknown)	(Unknown)	(Unknown)
<u>Costs</u> – Missouri State Highway Patrol (\$610)			
Consulting services	(\$15,000)	\$0	\$0
<u>Costs</u> – Department of Corrections (\$610.138.2) (SA4)			
Incarceration/probation costs	Less than (\$100,000)	Less than (\$100,000)	Less than (\$100,000)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(Unknown) to <u>\$1,890,427</u>	(Unknown) to <u>\$1,906,710</u>	(Unknown) to <u>\$1,906,911</u>

**CRIME VICTIMS'
 COMPENSATION FUND**

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>Revenue</u> – Department of Labor and Industrial Relations (§595.045)			
Penalty for felony or misdemeanor offenses	<u>\$1,916,666</u>	<u>\$2,300,000</u>	<u>\$2,300,000</u>
ESTIMATED NET EFFECT ON CRIME VICTIMS' COMPENSATION FUND	<u>\$1,916,666</u>	<u>\$2,300,000</u>	<u>\$2,300,000</u>
LEGAL EXPENSE FUND			
<u>Costs</u> – Potential for more lawsuits (§537,610) (SA7)*	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND*	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
*Could exceed (\$100,000) in any given fiscal year.			
CRIMINAL RECORDS SYSTEM FUND			
<u>Costs</u> – Missouri State Highway Patrol (§43.540, 589.410)			
Personal Service (1 FTE)	(\$35,496)	(\$43,660)	(\$44,751)
Fringe Benefits	(\$15,533)	(\$19,106)	(\$19,583)
Equipment and Expense	<u>(\$3,856)</u>	<u>(\$654)</u>	<u>(\$673)</u>
<u>Total Costs</u> – MHP	(\$54,885)	(\$63,420)	(\$65,007)
ESTIMATED NET EFFECT ON CRIMINAL RECORDS SYSTEM FUND	<u>(\$54,885)</u>	<u>(\$63,420)</u>	<u>(\$65,007)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
HIGHWAY FUNDS			
<u>Loss</u> – Department of Revenue (SA1 to SA3 & SA4)			
Decreased federal funds	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON HIGHWAY FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ROAD FUND			
<u>Loss</u> – Department of Transportation (SA1 to SA3 & SA4)			
Decreased federal funds:			
National Highway Systems	(\$5,829,167)	(\$14,410,000)	(\$14,840,000)
Interstate Maintenance	(\$5,608,333)	(\$13,860,000)	(\$14,280,000)
Surface Transportation Program	(\$7,512,500)	(\$18,570,000)	(\$19,130,000)
<u>Total Loss</u> – MoDOT	<u>(\$18,950,000)</u>	<u>(\$46,840,000)</u>	<u>(\$48,250,000)</u>
ESTIMATED NET EFFECT ON ROAD FUND	<u>(\$18,950,000)</u>	<u>(\$46,840,000)</u>	<u>(\$48,250,000)</u>
STATE SCHOOL MONEY FUND			
<u>Savings</u> – Decreased Distributions to School Districts (§488.5021)			
	Unknown to \$1,900,000	Unknown to \$1,900,000	Unknown to \$1,900,000
<u>Loss</u> – Decreased Transfers from General Revenue Fund (§488.5021)			
	<u>(Unknown to \$1,900,000)</u>	<u>(Unknown to \$1,900,000)</u>	<u>(Unknown to \$1,900,000)</u>
ESTIMATED NET EFFECT ON STATE SCHOOL MONEY FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - State Government FY 2003 FY 2004 FY 2005
 (10 Mo.)

FEDERAL FUNDS

Savings – Department of Social Services
 (\$454.505)

Reduced copy/postage expense	<u>\$10,534</u>	<u>\$13,026</u>	<u>\$13,416</u>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$10,534</u>	<u>\$13,026</u>	<u>\$13,416</u>
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FISCAL IMPACT - Local Government FY 2003 FY 2004 FY 2005
 (10 Mo.)

SCHOOL DISTRICTS

<u>Increase in Revenue</u> – Additional \$20 fee for penalties, fines, and sanctions not paid within 30 days (\$488.5021)	Unknown to \$1,900,000	Unknown to \$1,900,000	Unknown to \$1,900,000
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<u>Reduction in Replacement Revenue</u> – Decreased distributions from the State School Money Fund (\$488.5021)	(Unknown to <u>\$1,900,000</u>)	(Unknown to <u>\$1,900,000</u>)	(Unknown to <u>\$1,900,000</u>)
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ESTIMATED NET EFFECT ON SCHOOL DISTRICTS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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LOCAL GOVERNMENTS

<u>Increase in Revenue</u> – Additional \$20 fee for penalties, fines, and sanctions not paid within 30 days (\$488.5021)	Unknown to <u>\$1,900,000</u>	Unknown to <u>\$1,900,000</u>	Unknown to <u>\$1,900,000</u>
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>Unknown to \$1,900,000</u>	<u>Unknown to \$1,900,000</u>	<u>Unknown to \$1,900,000</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

BLG:LR:OD (12/01)

The proposed legislation would change several provisions relating to court procedures and jurisdiction. In its major provisions, the proposal would:

1. The proposed legislation would require the Attorney General to zealously defend the constitutionality of any statute when it is challenged in court. (§27.060)
2. Authorize the Highway Patrol to inform providers whether an applicant for employment is a registered offender under “Megan's Law.” (§43.540)
3. Allow county commission of any county of the first classification which has an appointed county counselor and which adopts rules to impose a civil fine not to exceed \$1,000 for each violation. The fine would be payable to the county general fund to be used to pay for the cost of enforcement of rules. It would be the duty of the county counselor to prosecute violations. (§§49.272 & 56.640)
4. Provide that the county clerk, not the circuit clerk, shall serve as the temporary chair of the salary commission. (§50.333)
5. Allow counties with combined offices of Circuit Clerk and Recorder of Deeds to separate the offices by voting to approve a system of appointed circuit clerks. (§§59.040 and 59.042)
6. Repeal a provision which allows the Marion County Circuit Court to appoint the District I Clerk of the Circuit Court if the offices of Circuit Clerk and Recorder of Deeds are separated. (§59.041) (SA5)
7. For purposes of set-offs, the definition of state agency would include the state supreme court, courts of appeal, and any circuit court of this state. (§143.782)
8. In cases of a claim against the second injury fund, the administrative law judge could appoint an impartial physician to examine issues presented by the second injury claim. (§287.210)
9. Provide for mechanic’s liens to be filed directly with the recorder of deeds office. Currently, such a lien must be filed with the clerk of the circuit court. The act would delete section 478.725 concerning the filing of mechanic’s liens in Marion County. (§§429.032, 429.080, 429.090, 429.120, 429.160, 429.270, and 429.460)

DESCRIPTION (continued)

10. Transfer duties regarding filing of liens to the recorder of deeds. Judgement creditors would be responsible for forwarding copy of judgment to the Secretary of State. (§§429.470, 429.490, and 429.540)
11. If the liens of health practitioners, hospitals, clinics, or other institutions exceed 50% of the amount due the patient, every health care practitioner, hospital, clinic, or other institution giving notice of its lien shall share in up to 50% of the net proceeds due the patient, in the proportion that each claim bears to the total amount of liens. (§430.225)
12. Delete the requirement that the Division of Family Services must file all income withholding orders with the circuit clerk in child support cases. (§454.505)
13. No filing fees would be assessed to a petitioner in an action seeking a protective order. Only the petitioner would be able to terminate an order of protection. If the order granted child custody to the respondent, then the proposal would provide procedures for both parties to agree or object to a request for termination. (§§455.027 and 455.060)
14. Provide that foreign orders of protection would be enforceable in state courts. The foreign order could be filed in the circuit court having jurisdiction. No fee or cost could be charged for the filing of the foreign order. (§455.067)
15. If a full order of protection is granted, a respondent could be ordered to pay petitioner's attorney fees. (§455.075)
16. The clerk of the court would make the uniform forms adopted by the supreme court available to petitioners. Section 455.508 would be deleted based on changes to section 455.504. The clerk would notify the guardian ad litem of appointment immediately and give the guardian the names of the parties within 24 hours. (§455.504)
17. Any moneys received in connection with preparation of court transcripts would be deposited in the State Court Administration Revolving Fund. (§476.058)
18. Provide that interpreters and translators cannot be compelled to testify to information that is otherwise attorney-client privileged. The interpreter/translator would be allowed a reasonable fee. The proposal would provide when that fee shall be paid by the Office of State Courts Administrator. (§476.061)

DESCRIPTION (continued)

19. Expand the Judicial Conference of the State of Missouri to include administrative law judges of the division of workers' compensation. Vacancies would be filed for the unexpired term of any member as provided by resolution of the judicial conference. (§§476.320 and 476.340)
20. Expand the Fine Collection Center to accept tickets for littering and clarify how notice is sent to the party. (§476.385)
21. Allow County Commissions to vote to pay the salaries of Deputy Circuit Clerks and Division Clerks with county funds. Currently, the salaries of Deputy Circuit Clerks and Division Clerks must be paid by the state. (§483.245)
22. Include any organization that offers prepaid legal services, any non-profit organization that furnishes legal services, or organizations that have as their primary purpose the furnishing of legal services to indigent to businesses that must be licensed to practice law. (§484.020)
23. Allow county clerks to collecting any surcharge authorized by ordinance, order, or resolution which provides an effective date for the surcharge on or after January 1, 1997, if the ordinance, order, or resolution is authorized by statute. (§488.005)
24. Certain fees for the filing of liens and for additional summons would be deleted. (§488.012)
25. Allow a court to collect unpaid court costs in excess of \$25 by seeking a set-off of the person's tax refund. (§488.020)
26. Victims of domestic assault and stalking would not be required to pay the costs associated with filing the criminal charges or the petition for protective order. (§488.610)
27. Provide that the judgment collected in juvenile proceedings is payable to the Family Services and Justice Fund. (§488.2300)
28. The Crime Victim's Compensation Judgement and county fee payable in felony and nonfelony criminal violations would be paid upon the plea of guilty or upon a finding of guilt. Exceptions would be made for certain misdemeanors. (§§488.4014 and 595.045)
29. Create the time payment fee. Courts could impose such a fee on all fines, fees or sanctions not paid in full within 30 days. The act would provide for distribution of the fee to the local court, court automation fund and drug court fund. (§488.5021)

DESCRIPTION (continued)

30. Allow interpreter fees for witnesses in juvenile proceedings and domestic violence actions. (§491.300)
31. Provide the master jury list created from source lists. Names of potential jurors on the master jury list would be a public record. (§494.410)
32. The qualified jury list and petit jury list would only be disclosed by local rule. (§§494.415 and 494.420)
33. Members of the General Assembly would be given standing to file suit or intervene to defend the constitutionality or operation of any legislative enactment. (§507.240)
34. Provide that judgments entered by associate courts would be liens on real estate without the filing of a transcript judgement. (§§511.350 and 517.151) The clerks, not just circuit clerks, could furnish and enter abstracts. (§511.510). The proposal would delete section 517.141 related to the treatment of transcript judgements by the clerk of the court.
35. The proposed legislation would allow the state of Missouri to be subject to lawsuits for monetary damages in Missouri state courts for violations of the federal Americans with Disabilities Act. (§537.610) (SA7)
36. Detail the venue for claims for compensation. (§537.684)
37. Clarify what information must be reported to the Missouri State Highway Patrol for DWI cases. (§577.051)
38. Allow the sealing of court records when the court imposes a suspended sentence and the person successfully completes any court-ordered probation. Once the records are sealed or closed, the arrest, charges, conviction or guilty plea cannot be used for impeachment purposes. A person would not be guilty of perjury if, in a later case, the person fails to disclose the existence of the sealed record. (§§610.106 and 610.110) (SA1 to SA3)

DESCRIPTION (continued)

39. Authorize courts to set aside criminal convictions and to expunge criminal records under certain circumstances. Current law allows courts to expunge arrest records if there was no probable cause for the arrest, no charges will be filed, and the subject of the arrest has no criminal convictions. This act adds the additional restriction that the subject not have suspended impositions of sentence (SISs) on his record and that there are no pending investigations regarding the arrest. The proposal would also allow expungement, however, based only upon a finding that no criminal charges have been filed against the subject for 10 years after the arrest. The proposal contains the Missouri Rehabilitation and Sealed Records Act which would authorize a court to set aside a person's criminal convictions and seal a person's criminal record if such person: 1. Has had no more than 1 felony or 2 misdemeanors; 2. Has not been convicted for 10 consecutive years following service of his or her most recent sentence; 3. Has no convictions for violent felonies or a sex-related offense; 4. Has no A or B felony convictions for a drug-distribution offense; 5. Has no convictions on his or her commercial drivers license (CDL) involving a BAC of .04 or higher; and 6. Is at least 25. The proposal would criminalize knowing use or release of records sealed pursuant to the act. Failure to seal or knowingly releasing such records would be a class B misdemeanor and knowing use of the records for financial gain would be a class D felony. (§§610.120, 610.122, 610.132, 610.132, 610.136, 610.138, & 610.140) (SA 4)
40. Bonds posted by a licensed bail bondsman shall be released at the time of sentence imposition. (Section 1)
41. Remove duplicate language and sections.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Public Safety
– Missouri State Highway Patrol
Office of Attorney General
Department of Insurance
Office of Administration
– Division of Personnel
– Administrative Hearing Commission
– Division of Risk Management/General Services
– Commissioner's Office

SOURCES OF INFORMATION (continued)

Office of Secretary of State
Missouri House of Representatives
Department of Health and Senior Services
Department of Mental Health
Department of Corrections
Missouri Senate
Department of Social Services
State Auditor's Office
State Treasurer's Office
Governor's Office
Department of Elementary and Secondary Education
Department of Economic Development
Office of State Courts Administrator
Department of Labor and Industrial Relations
Lieutenant Governor's Office
Department of Revenue
Office of State Courts Administrator
Office of State Public Defender
Office of Prosecution Services
Callaway County Circuit Clerk
St. Louis County Sheriff
Cole County Recorder of Deeds



Mickey Wilson, CPA
Acting Director

April 30, 2002